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ALEXANDER L. STEVAS,
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No. A-1001

In the
Supreme Court of the United States

October Term, 1982

~~82-265~~

ALEX J. RAINERI,

Petitioner,

-v-

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After Petitioner was convicted of three counts of a violation of Title 18, U.S.C., Sec. 1952 and 2; one count of a violation of Title 18, U.S.C. Sec. 1623; and one count of a violation of Title 18, U.S.C., Sec. 1503, the United States Court of Appeals for the Seventh Circuit affirmed those convictions, and on March 24, 1982 the United States Court of Appeals for the Seventh Circuit denied a Petition for Rehearing with a suggestion for rehearing in banc. The issues presented in this Court are:

1. Was Appellant's right to a speedy trial denied?

2. Was the interaction of the location of the trial and the selection of the jury panel in this action a denial of Petitioner's constitutional right to an impartial and fair jury as well as a violation of rule 18 of the Federal Rules of Criminal Procedure relating to location of trial?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Alex Raineri respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in these proceedings on February 8, 1982, and further respectfully prays for a Writ Reviewing the Order Denying Petitioner's Petition for Rehearing with Suggestion for Rehearing re banc, which order was entered by the United States Court of Appeals for the Seventh Circuit on March 24, 1982.

OPINION BELOW

The opinion of the United States Court of Appeals affirming Petitioner's conviction is reported at ____F.2d____(1982) and attached hereto as Appendix A. Petitioner's Petition for Rehearing is attached hereto as

as Appendix B, and the Order Denying Petitioner's Petition for Rehearing is attached hereto as Appendix C.

JURISDICTION

The Petition for Rehearing with Suggestion for Rehearing in Banc was denied on March 24, 1982. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. Section 3161 (h)(8)(A):

> "Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial."

18 U.S.C. Section 1861 Declaration of Policy:

> It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens

> shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

STATEMENT OF THE CASE

Petitioner was convicted of five felonies after a trial by jury in the Western District of Wisconsin, with the Court sitting in Madison, Wisconsin.

Petitioner's convictions were affirmed by the United States Court of Appeals for the Seventh Circuit, and the United States Court of Appeals for the Second Circuit denied Petitioner's Petition for Rehearing with Suggestion for Rehearing in Banc.

STATEMENT OF FACTS

The Western District of Wisconsin has adopted a plan for selection of jurors which is attached hereto as Appendix D. Essentially that plan carves the Western District of

Wisconsin into divisions for trial purposes and selection of petit jurors. Appendix E represents the distance involved between the Madison Division and the Superior Division, both of which are located in the Western District of Wisconsin.

Pursuant to Rule 18 of the Federal Rules of Criminal Procedure, Petitioner moves for a trial in the Superior Division. At a hearing on this request, the Clerk of Circuit Court for the Western District of Wisconsin testified, and relevant portions of that testimony are included as Appendix F. That testimony indicated that of the five divisions contemplated in the plan for selection of jurors for the Western District of Wisconsin, only two of those divisions had actually had a jury trial in the last five years, at a minimum.

The record further adequately demonstrates that the Federal Government had closed the majority of their Courthouse facilities in the Superior Division, but did have an actual court room available.

The record further adequately will demonstrate that the vast majority of the witnesses resided in the Superior Division, and the offenses for which Petitioner stands convicted occurred in the Superior Division.

With regard to Petitioner's alleged denial to his right of a speedy trial, as a statement of fact, Petitioner simply asserts that attached hereto as Exhibit G is an order of the trial court which directed a date for trial and further directed that said date would not be changed "absent a finding by the Court that the ends of justice served by such extension outweigh

the best interest of the public and the defendant in a speedy trial". That order was entered by the United States Magistrate on June 23, 1980 and that order is attached hereto as Appendix G. Said order set trial for commencement on August 29, 1980 and the trial in this matter was adjourned by a letter from the Clerk of Court which did not refer to any finding by the Court which occurred in the absence of any hearing.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the Seventh Circuit affirmed the trial court's finding that the Speedy Trial Act was not violated. The Court's opinion refers to the number of motions filed by the defense. The simple fact remains that the trial court entered an order, attached hereto as Appendix G, which set a trial date and

directed that that trial date would not be changed absent certain findings.

At the time of the arraignment, the defendant asked that the trial date of August 29th contained in the order be adjourned, and that request was summarily denied.

There was never any hearing with regard to the trial date of this matter. The trial was adjourned over two months from the date originally set, in the complete absence of any hearing.

The Court of Appeals for the Seventh Circuit ruled that the language in the Magistrate's order (Appendix G) concerning the finding as a prerequisite to an extension was "doubtless borrowed from 18 U.S.C. Section 3161(h)(8)(A)." (Appendix A) The Court of Appeals went on to state that the language of the order did not bind the Court to a "standard more rigid than the

statute". The statute reads as follows:

> "Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interests of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial". (Emphasis added.) 18 U.S.C. Section 3161(h)(8)(A).

It is clear from both the above quoted Federal statute and the Magistrate's own order that the entire time period from August 29, 1980 to the commencement of trial on November 24, 1980, was not excludable.

Based upon the foregoing, Petitioner respectfully represents that both the order

of the trial Magistrate, Appendix G , and the Federal Speedy Trial Act were violated by the procedure of summarily adjourning the Petitioner's trial date.

Petitioner further respectfully represents that this issue was timely raised before both the trial court and the Seventh Circuit Court of Appeals, and should have resulted in a dismissal of his indictment.

FURTHER REASONS FOR GRANTING THE WRIT

The interaction of the plan for the selection of jurors in the Western District of Wisconsin, together with the actual fact that the United States Federal Government saw fit to close down the bulk of their courtroom facilities in three of the five divisions within the Western District of Wisconsin, coupled with the language of Rule 18 of the Federal Rules of Criminal Procedure, should have resulted

in an order granting a trial in the Superior Division of the Western District of Wisconsin. Furthermore, since this timely request by the defendant was denied by the trial court, that denial should have resulted in a reversal of his conviction and a re-trial in the Superior Division.

The testimony of Joseph Skupniewitz, the Clerk of the District Court for the Western District of Wisconsin, found as Appendix F , makes it absolutely clear that no jurors have seen jury duty as petit jurors in the LaCrosse, Wausau or Superior Divisions for at least five years. That testimony further makes it absolutely clear that "the physical facilities at LaCrosse, Wausau, or Superior were all closed down approximately four or five years ago." (Testimony of Mr. Skupniewitz, Appendix F)

When this testimony is viewed in conjunction with the plan for selection of jurors, which provides that jurors from the Superior Division will only see service as petit jurors if there is a trial in the Superior Division, two facts become completely apparent. They are:

> 1. A defendant in a criminal action cannot be tried in Superior due to the fact that the Western District of Wisconsin does not have any courtroom facilities in Superior.
>
> 2. Jurors in the Superior Division will not see service as petit jurors due to the lack of facilities for Federal trial in Superior.

These two facts are equally true for the LaCrosse and Wausau Divisions of the Western Division of Wisconsin.

When the Court of Appeals for the Seventh Circuit decided this issue, that Court referred to a variety of so-called "facts" which are nowhere properly in the

record and were never raised by the Government at any point in time. These so-called "facts" appear on page 3 of Appendix A(1), and deal with items like "volume of cases in the Western District of Wisconsin... limited personnel, facilities and other resources...have resulted in an increased centralization of judicial activity in the district's largest population and litigation center, Madison, where both the only district judge and regular active service at the time of trial and the district's only senior judge resides".

The facts referred to by the Seventh Circuit Court of Appeals, be they facts or be they not facts, never appeared anywhere in the record until they appeared in the decision by the Court of Appeals. The simple plain fact is that the trial court of the Western District of

Wisconsin has not had any intention of trying any criminal actions in the Superior Division for at least five years, and apparently will never try any actions in that Division unless Petitioner's convictions are reversed and the matter is remanded for trial in the Superior Division. This is equally true of the LaCrosse and Wausau Divisions. Three-fifths of the jurors, on a geographical basis in the Western District of Wisconsin have been effectively prevented from serving as petit jurors in Federal Court. It is apparent from the rulings of both the trial court and the Seventh Circuit Court of Appeals that the situation will continue indefinitely, since the Government has closed down its facilities in three of the five divisions, while expanding them in the other two.

The interaction between the plan for the selection of jurors found as Appendix D and Rule 18 of the Federal Rules of Criminal Procedure should have clearly led to a trial in Superior, Wisconsin. Furthermore, this interaction flies in the fact of Title 28, U.S.C. Sec. 1861, which reads as follows:

> "To establish violation of 28 U.S.C. Section 1861, it is necessary to show systematic exclusion of identifiable group within community, that is 'cognizable group' consisting of class of persons who have quality requisite to permit them to challenge jury plan, since there are identifiable groups of people whose underrepresentation on list of votes, for whatever reason, does not give them standing to attack jury plan, such as people whose common characteristics are such that their inadequate inclusion does not frustrate purposes of Jury Selection Act...".

The Court of Appeals for the Seventh Circuit ruled that Petitioner did not resort to an exclusive remedy provided, and declined to reach an issue of con-

stitutional dimension which needs to be reached if three-fifths of the jurors in the Western District of Wisconsin, on a geographical basis, are to ever see jury service on petit juries.

The Court of Appeals' decision referred to Title 28, Section 1867 as an "exclusive remedy". The Defendant did move to dismiss the indictment on the grounds of improper selection of jurors, and Petitioner has consistently maintained that the issue relating to Rule 18 of the Federal Rules of Criminal Procedures, the location of trial, and the selection of jurors, is an inextricably intertwined issue, which has been properly preserved for appeal.

Footnote 5, Page 5 of Appendix A(1) the opinion of the Seventh Circuit Court of Appeals, indicates that it is the

Court's responsibility to order a stay in the proceedings pending the selection of a petit jury in conformity with Title 1867, if that section has been violated, not Petitioner's responsibility.

Several cases which Petitioner respectfully represents should clearly result in a reversal when the location of trial is staged for the convenience of the government, rather than in conformity with Rule 18 of the Federal Rules of Criminal Procedure are DuPoint v. United States, 388 F.2d 39 (5th Cir. 1967); United States v. Fernandez, 480 F.2d 726 (2nd Cir., 1973); and United States v. Burns, 662 F.2d 1378 (11th Cir. 1981).

The Seventh Circuit Court of Appeals cited two of the just referenced cases in their own footnote and quoted some "legitimate factors" which militate against following the rulings of those cases and DuPoint.

The plain and simple fact is that the so-called "legitimate factors" referred to by the United States Court of Appeals are nowhere found in the record and are furthermore not legitimate enough factors for holding the trial of a criminal action in a locale which conveniences the government and inconveniences the Defendant, particularly in view of the expressed language of Rule 18 of the Federal Rule of Criminal Procedure.

CONCLUSION

Based upon the foregoing argument and authority, Petitioner respectfully asks this Court to review the decision of the United States Court of Appeals for the Seventh Circuit with regard to his right for a speedy trial, and the location of trial and selection of jurors within the Western District of Wisconsin.

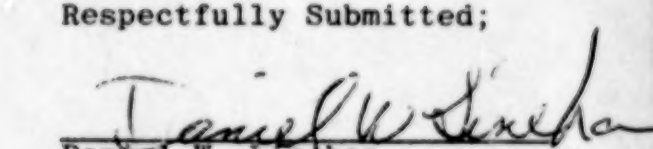
Petitioner further respectfully points out that unless the requested writ is granted by this Court, it is apparent from the decision by the United States Seventh Circuit of Appeals that the trial court for the Western District of Wisconsin will be allowed to continue its practice of having only jurors from selected geographical areas within the Western District of Wisconsin serve on petit juries. Petitioner respectfully represents that this is flagrant violation of the United States Constitution and is furthermore in violation of 28 U.S.C. Section 1861 and is further in violation of Rule 18 of the Federal Rules of Criminal Procedure. The simple fact remains that had Petitioner's trial been held in Superior, where it should have been held pursuant to all reasonable,

statutory, and legal authority, Petitioner's jurors would have been twelve people from the Superior Division of the State of Wisconsin, rather than twelve people from the Madison Division of the Western District of Wisconsin. What the Supreme Court of the United States and the Court of Appeals for the Seventh Circuit may not be aware of is the fact that individuals from northern Wisconsin are as different in their psychological make-up and response to Federal indictments from individuals in southern Wisconsin, as the Yankees were from the Rebels. Leaving that argument aside, however, Petitioner respectfully repeats and emphasizes that the issuance of this Writ will protect the integrity of Rule 18 of the Federal Rules of Criminal Procedure, Title 28 U.S.C. Section 1861, and the failure to issue the requested

Writ would result in a reversal (by implication) of DuPoint v. United States, supra; United States v. Fernandez, supra; and United States v. Burns, supra.

Dated this 8 day of June, 1982.

Respectfully Submitted;



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